

1-0100-9259-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE BOARD OF ACCOUNTANCY

In the Matter of Jerome B. Marshik,
C.P.A., License No. 02252

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge George A. Beck at 1:30 p.m., December 7, 1994, at the Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota. Joan M. Wood, Assistant Attorney General, 525 Park Street, Suite 500, St. Paul, Minnesota 55103, appeared on behalf of the Complaint Committee of the Board of Accountancy ("the Board"). Jerome R. Marshik, ("the Respondent"), appeared on his own behalf. The record closed on December 20, 1994, upon receipt of a late-filed exhibit.

This Report is a recommendation, not a final decision. The Board of Accountancy will make the final decision after a review of the record and may adopt, reject, or modify the Findings of Fact, Conclusions and Recommendations contained herein. Pursuant to Minn. Stat. § 14.61, the final decision of the Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Board. Parties should contact Dave O'Connell, Executive Secretary, Board of Accountancy, 85 E. 7th Place, St. Paul, Minnesota 55101, telephone: 612/296-7937, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUES

The issue in this contested case proceeding is whether or not disciplinary action should be taken against the occupational license of the Respondent on the grounds set forth in Minn. Stat. § 214.101, subd. 1 (1994). Specifically

the issues are (1) whether Respondent is a licensee of the Board, (2) whether full payment of Respondent's child support and spousal maintenance arrearages has been made, and (3) whether the suspension of Respondent's license or probation is appropriate.

Based upon all the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Board of Accountancy received a notice on November 17, 1994, from Morrison County Social Services requesting that a hearing be conducted for the suspension of the occupational license of Respondent, Jerome R. Marshik, because Respondent is in arrears in child support and spousal maintenance payments. (Ex. 2-C.)

2. The Jerome R. Marshik, who is named in the notice from Morrison County Social Services, currently holds a certified public accountant license No. 02252, issued by the Board. (Ex. 1.)

3. Pursuant to a court order from the Morrison County District Court Respondent was ordered to pay \$1,172.95 per month as support for his minor child, and \$468.84 per month as spousal maintenance for his ex-wife. (Ex. 2-A.)

4. As of the date of this hearing, Respondent is in arrears in child support payments in the amount of \$8,096.09, and is in arrears in spousal maintenance payments in the amount of \$6,626.60. The total amount of Respondent's arrearages is \$14,722.69. (Ex. 2-B.)

5. To date, Respondent has not paid the arrearages in child support or spousal maintenance payments.

6. The Respondent has an appeal pending with the Court of Appeals of the district court order dated April 22, 1994, which denied his motion to reduce child support, held him in contempt for failure to pay child support and maintenance, and ordered him confined to jail for 60 days or until he paid \$5,526.27. (Ex. 3.)

7. On April 27, 1994, the Respondent posted a \$500 cash cost bond and \$5,526.27 cash "supersedeas bond". (Ex. 3.) The "supersedeas bond" was then released to Mr. Marshik's former wife so that the Respondent could purge the prior contempt finding and avoid jail. No supersedeas bond is presently posted. (Ex. 4.) The \$5,526.27 payment was credited before calculation of arrears in Finding of Fact No. 4.

8. The Respondent believes that he may be required to file bankruptcy if he loses his C.P.A. license and that his clients will face higher fees from other practitioners.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Board and the Administrative Law Judge have jurisdiction here and authority to take the action proposed pursuant to Minn. Stat. §§ 14.50, 214.101 and 326.229.

2. The Board gave proper notice of this hearing and has fulfilled all relevant substantive and procedural requirements of law and rule.

3. Minn. Stat. § 214.101, subd. 1(b), provides, in part, as follows:

. . . If the board finds that the person is licensed by the board and evidence of full payment of arrearages found to be due by the court or the public agency is not presented at the hearing, the board shall suspend the license unless it determines that probation is appropriate under subd. 2. The only issues to be determined by the board are whether the person named in the court order or public agency notice is a licensee, whether the arrearages have been paid, and whether suspension or probation is appropriate. The board may not consider evidence with respect to the appropriateness of the underlying child support order or the ability of the person to comply with the order. The board may not lift the suspension until the licensee files with the board proof showing that the licensee is current in child support payments and maintenance.

4. Jerome R. Marshik is a licensee of the Board, as described in Minn. Stat. § 326.19, subd. 2.

5. Full payment of Respondent's child support and spousal maintenance arrearages has not been made.

6. Under Minn. Stat. § 214.101, subd. 2, the Board is authorized to allow the Respondent to continue to practice on probation if the suspension of the license would create an extreme hardship to either the Respondent or to persons whom the Respondent serves.

7. Respondent is in violation of Minn. Stat. § 214.101, subd. 1 (1994), and therefore, grounds exist to suspend Respondent's occupational license.

8. An appeal from an order of the district court stays the proceedings only if the appellant provides a supersedeas bond. Minn.R.Civ. App. P. Rule 108.01, subd. 1; Anderson v. Anderson, 288 Minn. 514, 179, N.W.2d 718 (1970).

9. There is presently no supersedeas bond on file with district court.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the Board take disciplinary action against Jerome B. Marshik's certified public accountant license.

Dated this 21st day of December, 1994.

/s/

GEORGE A. BECK

Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to send its final decision upon each party and the Administrative Law Judge by first class mail.

MEMORANDUM

The Respondent did not argue that the arrearages specified by the Court were now paid. Rather, he argued that this license revocation should be stayed pending resolution of an appeal he has filed with the Court of Appeals. The appeal seeks to reverse a district court order finding him in contempt and denying a motion to modify.

The general rule is that a district court order is stayed only when the appellant has filed a supersedeas bond with the district court. Minn.R.Civ. App. P: Rule 108.01, subd. 1. In this case, the district court approved the filing of \$5,526.27 cash as a supersedeas bond in April of 1994. However, the amount was later released to the petitioner, Margaret Marshik, to satisfy arrearages, so that the Respondent would not be confined to jail as was required by the April 22, 1994 district court order. Since no supersedeas bond is in effect, the district court order is not stayed and cannot be an impediment to proceeding with this license revocation.

It should be noted that even if the Respondent prevails in his appeal, the motion to modify cannot be retroactive and he will likely still be responsible for the arrears from May of 1993 to the filing of the motion. Additionally, the Respondent's appeal is from the April 22, 1994 order of the district court while this proceeding concerns arrears under the July 20, 1993 order.

GAB